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EXAMINER	
KRAMER, DEVON C	

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/038,910
Filing Date: January 08, 2002
Appellant(s): FITZ ET AL.

Nils Pedersen
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/2/04.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because the examiner does not believe the groups to be separately patentable.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

3,904,226	Smalley	9-1975
5,257,680	Corcoran et al	11-1993
6,443,437	Beyene et al	9-2002

PGPUB 2002/0066629 Muller June 6, 2002

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 22, 33-35, 43, 45 and 47-50 are rejected under 35 U.S.C. 102(b). This rejection is set forth in a prior Office Action, mailed on 4/2/04.

Claims 22, 33-35, 43, 45 and 47-50 are rejected under 35 U.S.C. 102(e). This rejection is set forth in a prior Office Action, mailed on 4/2/04.

Claim 42 is rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 4/2/04.

(11) Response to Argument

Please note that the elected species are depicted in figures 7 and 9 of the instant application.

In response to appellant's arguments that claim 22 is not anticipated by Smalley, appellants argue that Smalley lacks a fluid cylinder, two pistons and a sealing member arranged between two pistons so that when damping occurs by the piston rod displacing one of the pistons in the fluid cylinder, the elastically deformable sealing member is squeezed between the two pistons and pressed against the cylinder wall. Please note that air is a fluid, and air is present in the cylinder (6) of Smalley. Further, as the pistons move within the fluid cylinder in Smalley, air is pushed out, making room

for the elastomer to contact the interior walls of the fluid cylinder. Elements (18, 19a) can be considered pistons because they work against the force of the bushings (21, 22) and cooperate with the bushing to move fluid out of the fluid cylinder when a bushing is fully compressed (figure 5, bushing 21). Appellant further argues that item 10 is not a piston, but please note, the examiner does not refer to element 10 as a piston in the office action mailed on 4/2/04. Appellant also argues that the bushing (21) of Smalley cannot be considered an elastically deformable sealing member. Please see figure 5 of Smalley where it is clearly seen that the bushing seals against the walls of the fluid cylinder. Please note that the elastically deformable sealing members (21, 22) are positioned between the two pistons (18, 19a) and are squeezed between the two pistons. Though, element 10 assists in squeezing the bushings, the squeezing still takes place between the two pistons. Appellant argues that piston (18) is not attached to the rod (12) and for that reason, cannot be considered a piston. Clearly the piston is shown as being attached to the rod as seen in the figures.

In response to appellant's arguments that claim 34 is not anticipated by Smalley, Smalley provides two bushing members (21, 22), which are shown compressed in figure 4. Again, please note that appellant claims that the elastically deformable member is squeezed between the two pistons, appellant does not state that the two pistons perform a squeezing action on the elastically deformable sealing member or anything related thereto.

In response to appellant's arguments that claim 35 is not anticipated by Smalley, appellant argues that if elements (18, 19a) are considered two pistons, then Smalley

has no solid body made of a rubber elastic material connecting the two pistons. Please note that the two elastically deformable members (21, 22) of Smalley are situated between the two pistons (18, 19a) an are shown to form a connection between the two pistons. There is no open space present between pistons (18, 19a) because of the elements (10, 21, 22) connecting the pistons together.

In response to appellant's arguments that claim 42 is not anticipated by Smalley, please refer to the above arguments with respect to claim 22. Further, applicant argues that the there would be no motivation to use the device of Smalley to damp vibrations on a piece of furniture as taught by Muller. Please note that both devices absorb impact to avoid excessive damage to parts, and both have similar structure.

In response to appellant's arguments that claim 43 is not anticipated by Smalley, appellant argues that Smalley does not provide structure causing the squeezing of an elastically deformable friction braking member between first and second pistons to press the member against a cylinder wall so as to cause damping caused by friction in addition to damping caused by fluid damping. Please note that friction damping occurs when the elastically deformable sealing member (21, 22) of Smalley contacts the inner wall of the fluid cylinder, further, as the sealing member is compressed fluid is pushed out of the cylinder due to the sealing member contacting the fluid cylinder wall creating some fluid damping.

In response to appellant's arguments that claim 45 is not anticipated by Smalley, please see the remarks with respect to claim 35 above.

In response to appellant's arguments that claims 47 and 48 are not anticipated by Smalley, clearly air is present in the cylinder of Smalley and air damping is present when the sealing member is compressed as stated in the arguments with respect to claim 43 above.

In response to appellant's arguments that claim 49 is not anticipated by Smalley, please note that appellant claims that the elastically deformable member is squeezed between the two pistons, appellant does not state that the two pistons perform a squeezing action on the elastically deformable sealing member or anything related thereto.

In response to appellant's arguments that claim 22 is not anticipated by Corcoran, appellant argues that Corcoran does not have two pistons (22, figures 3, 4, 5, 6) arranged so as to be linearly displaceable in a fluid cylinder. Clearly pistons (22) are pistons as defined by appellant's invention. Appellant argues that there is only a single piston in Corcoran, but the examiner would like to point out that appellant's two pistons can be considered a single piston. Note that pistons (22) of Corcoran can move relative to each other and therefore can be considered two pistons. Appellant states, "It is the device as a whole that forms a piston, and not each separate washer." (Page 10) Taking into account this statement, appellant's figures only provide one piston. Please note that upon movement of the piston rod of Corcoran relative movement of the pistons (22) occurs, thus pressing elastically deformable sealing member (14) against the fluid cylinder wall.

Appellant further argues that there would be no motivation to use the damper of Corcoran on a piece of furniture. These dampers are very similar in structure and both are capable of being mounted to a piece of furniture to prevent excessive shock.

In response to appellant's arguments that claim 43 is not anticipated by Corcoran, there are two sealing members (14, 16) between the pistons in Corcoran.

In response to appellant's arguments that claim 22 is not anticipated by Beyene, applicant argues that a fluid cylinder is not identified. Clearly there is fluid present in the telescopic outer and inner cylinder (22, 32) depicted in figures 3-4. Though Beyene references item 26 as a top end plate, it can be considered a piston with a piston rod (28). When damping occurs piston (60) is displaced with the fluid cylinder (22) wherein elastically deformable sealing member (50a) is squeezed between the two pistons and pressed against the cylinder wall. The cylinder wall being wall (22). Claim 34 is rejection for the same reasons as stated above. Claim 42 stands rejected over Beyene and Muller for the same reasons as stated with the other references. In re claim 43, clearly some friction damping takes place when the cylinder is compressed.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

DK 12/11/04
December 11, 2004

Conferees
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